

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
ROY CLARKE, On Behalf of Himself and Others
Similarly Situated, :

Plaintiff, :

-v- :

SECURITY KING INTERNATIONAL LLC, BEE
AMATO, and AKIVA “DOE”, :

Defendants. :

22 Civ. 5082 (JPC)

ORDER

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JOHN P. CRONAN, United States District Judge:

On June 16, 2022, Plaintiff sued Defendants for their failure to comply with federal and state wage laws. Dkt. 1. Plaintiff served Defendant Security King International LLC on July 12, 2022, Dkt. 6, but never served Defendants Bee Amato and Akiva “Doe” (the “Individual Defendants”). On September 20, 2022 the Court ordered Plaintiff to show good cause for his failure to serve the Individual Defendants within 90 days of filing his Complaint, as required by Federal Rule of Civil Procedure 4(m). Fed. R. Civ. P. 4(m).

Plaintiff filed a letter with the Court on September 26, 2022 stating that he has “attempted to locate the identity of Akiva ‘Doe’ before initiating service on the Individual Defendants.” Dkt. 8, at 2. Plaintiff further stated that he believed he would be able to determine the identity of Doe and serve both Individual Defendants by October 28, 2022, 44 days after his deadline to serve under Rule 4(m). *Id.*

Rule 4(m) requires that: “If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”


Fed. R. Civ. P. 4(m). However, if the plaintiff shows good cause for the failure to serve, the Court must “extend the time for service for an appropriate period.” *Id.* “The plaintiff bears the burden of proof in showing that [he] had good cause in not timely serving the defendant.” *Deptula v. Rosen*, 558 F. Supp. 3d 73, 85 (S.D.N.Y. 2021) (internal quotation marks omitted). “To establish good cause ‘a plaintiff must demonstrate that despite diligent attempts, service could not be made due to exceptional circumstances beyond his or her control.’” *Id.* (quoting *Spinale v. United States*, No. 03 Civ. 1704 (KMW) (JCF), 2005 WL 659150, at *3 (S.D.N.Y. Mar. 16, 2005), *aff’d*, 352 F. App’x 599 (2d Cir. 2009)).

Plaintiff has failed to show good cause. Plaintiff’s September 26, 2022 letter contains no information regarding any exceptional circumstance preventing him from timely serving the Individual Defendants. Plaintiff has not presented any details of his attempt to identify Akiva Doe and has not stated why he needed to identify one Defendant in order to timely serve the other.

The Court therefore dismisses this case without prejudice as to the Individual Defendants Bee Amato and Akiva Doe. The Clerk of Court is respectfully directed to terminate Amato and Doe from this action.

SO ORDERED.

Dated: October 4, 2022
New York, New York



JOHN P. CRONAN
United States District Judge